

Exhibit C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SEMONE HARVEY, :
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Plaintiff, : 18-CV-3946 (ARR) (VMS)
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V. : July 9, 2019
:
:
CBCINNOVIS, INC., :
:
Defendant. :
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TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE VERA M. SCANLON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: JOHN SOUMALIS, ESQ.
KEVIN MALLON, ESQ.

For the Defendant: BRIAN PETE, ESQ.

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1 THE COURT: This case is Harvey v.
2 CBCInnovis, Inc., 18-CV-3946.

3 For the plaintiff?

4 MR. SOUMALIS: Your Honor, good afternoon.
5 John Soumalis for the plaintiff Ms. Harvey, and my
6 colleague, Kevin Mallon, is here with me today.

7 THE COURT: For defendant?

8 MR. PETE: Good afternoon, your Honor.
9 Brian Pete, Lewis Brisbois Bisgaard & Smith.

10 THE COURT: Are you part of this? Do you
11 want to sit with him?

12 UNIDENTIFIED SPEAKER: No, that's not
13 necessary, your Honor.

14 THE COURT: Have you made any progress on
15 your discovery dispute?

16 MR. SOUMALIS: Your Honor, no progress since
17 our letter of June 7th. We are just stuck on that issue
18 and need some assistance from the Court.

19 MR. PETE: Your Honor, if I could, just to
20 start, if it's all right with your Honor. In your
21 Honor's order setting the conference, you asked defense
22 counsel to state whether they intended to move pursuant
23 to Rule 12(c). I think in looking at the issues, it's
24 really germane to this dispute, one, whether or not
25 there is a proper class going beyond two years in

1 between the two to five-year FCRA period, as well as
2 whether Ms. Harvey is an adequate representative to
3 class members from before. CBCInnovus obtained records
4 directly from Lexus/Nexus. We do intend to move, it
5 would be either pursuant to Rule 12, Rule 23, what have
6 you, the motion to strike the class allegations, class
7 definitions as to the five-year class.

8 I think in that motion, we will flesh out
9 the arguments that were teed up in the joint status
10 letter. We can make that motion relatively promptly so
11 as not to unduly delay anything within fourteen days.
12 I believe that that motion will allow your Honor to
13 either resolve or moot some of the discovery issues to
14 clear a path going forward.

15 THE COURT: Okay. Just so I understand, on
16 defendant's side, why are you offering as it's almost
17 like a sampling, the people who have disputed the
18 record? You can all stay seated, that's fine.

19 MR. PETE: Sure. We produced the records of
20 consumer individuals who disputed civil judgment
21 information for reasons which were the same as Ms.
22 Harvey's. This was done through a meet and confer with
23 plaintiff's counsel. Of course, plaintiff's counsel
24 didn't waive their right to seek any further discovery.
25 We did that for the period identified in our discovery

1 responses, which was July 28, 2017 to August, 2018.
2 That's the period in which CBCInnovis obtained civil
3 judgment records from Lexus/Nexus, which is really the
4 gravamen of plaintiff's complaint, which is that
5 beginning in July, 2017, the big three credit agencies
6 stopped collecting civil judgment information. CBC
7 then (ui) to Lexus.

8 So we produced records which we felt were
9 one of which she is an adequate representative because
10 prior to us using Lexus, it's an entirely different
11 fact pattern. Her complaint alleges that we should
12 have not used Lexus because of what happened in the big
13 three, we should have contacted Lexus for updated
14 records. So in our view, her arguments as to what is
15 an adequate or necessary standard under the FCRA is
16 going to be different than individuals going back from
17 the pre-Lexus period.

18 Second to that is the statute of limitations
19 issue. In the FCRA, it's the earlier of two years from
20 the date of discovery or five years from the date of
21 the violation. So going beyond two years in our view,
22 and there are courts that have held the same, it's an
23 individualized inquiry for everyone beyond two years as
24 to when they discovered their violation. Essentially,
25 each class member would have to be separately litigated

1 as to whether or not their claim is barred by a statute
2 of limitations. So we produced records pertaining to
3 what we felt was the relevant time period.

4 THE COURT: Okay, so why the disputers?
5 That's what I meant?

6 MR. PETE: We proposed producing the
7 disputers because, one, we had seen that method taken
8 -- that course taken in other cases. Two, we felt that
9 in terms of producing -- minimizing the burden on our
10 client and kind of getting right to what data could be
11 most relevant, in our view, consumers who dispute it
12 are perhaps more likely to have an incorrect judgment
13 record.

14 So we started with that as a position and I
15 think what's happened is, as we've communicated to
16 counsel throughout this case, there's just not a lot of
17 disputes. We only had about I think thirteen disputes
18 for the same reason as Ms. Harvey, going back to the
19 period in which Lexus was used, which is very small.
20 This is something that we touched -- I touched upon I
21 believe in the initial conference, that in our view,
22 there's arguably not even numerosity here.

23 THE COURT: That's what I was trying to
24 understand. We were looking at the transcript in the
25 Delarosa (ph), case, which is Delarosa v. Experian

1 Information Solutions. It was a little bit flipped.
2 It was the defendant who -- anyway, whatever. The
3 particulars -- this is your case so --

4 MR. PETE: I'm familiar with that case as
5 well.

6 THE COURT: Okay.

7 MR. PETE: And actually, that discovery
8 conference.

9 THE COURT: It seems like in that case,
10 plaintiff at least was trying to get to forty. So if
11 you only have thirteen -- put aside whatever plaintiff
12 wants this class to be, even the narrow -- whatever the
13 narrow class is, they would hope that there's at least
14 forty members. But if you're saying you've gotten to
15 thirteen --

16 MR. PETE: Yeah, thirteen consumers who
17 disputed because of a civil judgment record. In
18 Delarosa -- the other thing to keep in mind is CBC is a
19 reseller. Delarosa was against one of the big three,
20 so they were starting from a much bigger pool to begin
21 with.

22 THE COURT: Right.

23 MR. PETE: This is, as the complaint
24 indicates, kind of a new product. So it's being
25 presumed that there's a certain high error rate but

1 there's no basis for that. The reason we only have
2 thirteen I think is indicative of the fact that, out of
3 the tens of thousands (ui), that only thirteen are
4 being disputed I think is a good indicator of whether
5 or not there's an actual problem here. I think that
6 that small number, which we've shared and which we've
7 kind of intimated throughout this entire case, is now
8 leading towards expanding the scope of the discovery in
9 the five years because now the period which we feel is
10 actually relevant is too small, for plaintiff that is,
11 not defendant.

12 THE COURT: Okay. One other thing: The
13 complaint is primarily or is about Lexus/Nexus, even
14 if, plaintiff, you're trying now to have some broader
15 definition. Were there other vendors whose judgment-
16 related information you included on plaintiff's report,
17 I guess we'll call it?

18 MR. PETE: As far as I'm aware, the other
19 information would have come from the big three
20 reporting agencies. The civil judgment information did
21 come from Lexus/Nexus.

22 THE COURT: And that was the only source of
23 it, Lexus/Nexus.

24 MR. PETE: Of the civil judgment
25 information.

1 THE COURT: Okay.

2 MR. PETE: The complaint is correct that in
3 July, 2017, Experian, Equifax, and Transunion stopped
4 reporting it, but that didn't actually bar it from
5 being reported. I believe it was through a settlement
6 and a consent order, so Lexus became the source, direct
7 source for CBC for civil judgment information.

8 THE COURT: So on your side, what would be
9 -- if you stick with your version of what you think the
10 class should be, which I think -- as I understand it,
11 the limited time period for those individuals for whom
12 information was drawn from Lexus/Nexus, right?

13 MR. PETE: Yeah, I think the --

14 THE COURT: But thirteen doesn't get them to
15 forty, which is where --

16 MR. PETE: I mean, I --

17 THE COURT: -- which is where they want to
18 be. Obviously, your --

19 MR. PETE: I know. I'd love to get them to
20 forty. I may not be able to. The number is what it
21 is.

22 THE COURT: What number is what it is
23 because you've provided those who disputed, right?

24 MR. PETE: Yes.

25 THE COURT: On the thought that if they took

1 the people who disputed and went back to the OCA
2 records or whatever, the state records, that might help
3 them identify individuals who had either their judgment
4 satisfied or vacated or something happened such that it
5 shouldn't have been reported as an open judgment,
6 right?

7 MR. PETE: Yes.

8 THE COURT: But that hasn't led -- given
9 that only have thirteen, that's not going to get to
10 forty -- the underlying idea that the people who
11 complained might be the people who actually had
12 problems, you're obviously suggesting indirectly, and
13 those who didn't complain didn't have problems, which
14 may or may not be correct, but anyway. How do we get
15 to --

16 MR. PETE: It sounds as if your Honor may be
17 proposing a compromise that we haven't discussed.

18 THE COURT: I'm asking you what you're
19 suggesting because we haven't talked about -- one of
20 the things I wanted to know from the parties, but it's
21 particularly you, is what are the logistics of this
22 production because on the plaintiff's side -- I'm going
23 to talk to the plaintiff in a few minutes -- the
24 numbers that -- if you were to work off of, and I'm not
25 suggesting we're going to, but this footnote 1 that

1 there are 768,000 New York judgments that were fully
2 satisfied or vacated in the 2013 to March, 2019 period.
3 I have no idea what the scale of your business is. You
4 didn't touch on all those people but there's a vast
5 number of possible -- people about whom reports could
6 have been issued that might have had this issue, right?

7 MR. PETE: Yes, and I think part of --

8 THE COURT: But I don't know what your data
9 looks like.

10 MR. PETE: CBC's data -- CBC is a reseller
11 so they don't -- they only -- when a client contacts
12 them, they contact either the big three or a vendor and
13 they create a report and the report -- they merge that
14 (ui).

15 THE COURT: I'm sorry, they merge the Lexus
16 information to that, too?

17 MR. PETE: Yeah, they take the Lexus
18 information and then send a report. So their data is
19 really -- they don't maintain necessarily these
20 physical reports. It's essentially a data image, which
21 then has to be -- the individual data points have to be
22 basically re-imaged and then re-kind of put together.
23 And then going back I think beyond two to three years
24 is an issue of archiving certain data before the case
25 was filed. The data is still available. But given the

1 number of potential reports with judgments, which could
2 be in the six figures, that CBC has dealt with, we're
3 looking at a significantly burdensome task to go all
4 the way back to five years.

5 THE COURT: What does it look like if you're
6 looking at the same period that you talked about, the
7 July -- do I have the wrong one? Sorry. Yeah, the
8 July, 2017 to August, 2018, right?

9 MR. PETE: Yeah.

10 THE COURT: That's the shutting down of the
11 big three reporting this information and you getting it
12 from Lexus. So if you take the period for which you
13 reported out Lexus-derived, New York, judgment-related
14 information and pushed that out, is there a way for you
15 to -- your client to know what number of people that
16 is?

17 MR. PETE: Yeah, there's a way for them to
18 know what number of people have --

19 THE COURT: And what's involved -- well,
20 then to access that. What's involved in the technical
21 side because this analysis ultimately, putting aside
22 the legal question, is a question of proportionality.

23 MR. PETE: Yeah.

24 THE COURT: To use that example, if your
25 client hits one button or puts in a couple of data

1 points and can push it all out, that's no big deal.

2 MR. PETE: I mean, it's not a matter --

3 THE COURT: So what is it?

4 MR. PETE: It's not a matter of that. I

5 mean, it took them a decent amount of time to put

6 together just the list of the thirteen we had,

7 including multiple departments within the company,

8 their IT department, their data storage coordinator, et

9 cetera. So it can be done of course for --

10 THE COURT: Both those are the people who --

11 are you looking at the same data set because records

12 you pushed out isn't the same as the people who called

13 in and said, wait a minute, this is wrong, or whatever

14 they did, emailed you, called you, whatever they did.

15 MR. PETE: Those individuals all had civil

16 judgment information on a report that they disputed.

17 THE COURT: But was the hard part finding

18 the disputers or finding the disputers' records?

19 MR. PETE: I think the difficulty in this is

20 doing all the necessary filtering. Filtering by

21 disputes I think helps the process because it's

22 basically a data category that you can use to narrow,

23 which I think is why, in the Delarosa case, it was the

24 flip side, which is why they wanted it -- because

25 Experian or whoever was just going to dump hundreds of

1 thousands of records.

2 THE COURT: Do a dump, right.

3 MR. PETE: I felt that -- we proposed just
4 meeting in the middle saying, we'll run this and we'll
5 do what Experian didn't want to do, which is we'll go
6 ahead and we'll do another step, filter the disputes
7 and see what we get.

8 THE COURT: Is your client capable and what
9 would it cost and how much time would it take for them
10 to do a production that was -- we're going to now say
11 put aside some privacy concerns. I don't know if there
12 should be redactions or not but for your client to make
13 a production that was all of the reports to your
14 clients, or to their clients rather, from July, 2017 to
15 August, 2018 that included New York judgment-related
16 information from Lexus/Nexus, not only those that
17 disputed it.

18 MR. PETE: I just want to be -- just so I
19 understand your Honor correctly. What we produced was
20 a spreadsheet of identifying information of a consumer
21 i.d., the judgment amount, the index number, the date
22 of the inquiry, and I believe the date the report was
23 issued, the reason being is counsel's plan, as I
24 indicated in the initial conference, was to match that
25 up --

1 THE COURT: Right.

2 MR. PETE: -- with what's in the public
3 data.

4 THE COURT: Right.

5 MR. PETE: So in our initial production, we
6 did not recreate and re-image the reports. We of
7 course produced Ms. Harvey's report. So I just want to
8 make sure -- is your Honor asking if -- proposing to
9 expand the production we already made in terms of the
10 data?

11 THE COURT: Yeah, look, you only got
12 thirteen, they're looking for forty. We've got to find
13 -- they have to know whether, at least in the smallest
14 class here, which whatever -- we'll talk about the
15 parameters.

16 MR. PETE: There are more than forty --
17 there are more than forty consumers with civil
18 judgments on their reports.

19 THE COURT: Yeah, but there's -- presumably,
20 hopefully, there's a very significant number of them
21 for whom the information is correct. They didn't
22 satisfy -- they didn't pay their judgments, the
23 judgments weren't vacated. The fact that Lexus didn't
24 update it within thirty days is probably capture -- I
25 don't know when they updated it but it's probably going

1 to capture a small slice of whatever. There are
2 roughly a hundred or so thousand judgments that
3 something changes in a year. That's totally based on
4 this footnote.

5 MR. PETE: So I mean, in terms of the time
6 and cost to -- correct me if I misunderstood it -- to
7 essentially report civil judgment information for all
8 New York judgments on consumer reports from that June
9 28th to August, 2018 period, regardless of a dispute.
10 Is that correct?

11 THE COURT: For which you drew the
12 information from Lexus.

13 MR. PETE: From which the information was
14 drawn from Lexus.

15 THE COURT: And I'm using report but I don't
16 think --

17 MR. PETE: Yes.

18 THE COURT: I'm not taking into account
19 whatever this re-imagine is. So if there's something -
20 - if you have a spreadsheet that when you said it's
21 your clients is dumped into some nice form, I'm not
22 talking about that. I'm talking about getting it in a
23 way where the data is identified by field or in a
24 report version, it depends. You have to tell me how
25 your client keeps the information.

1 MR. PETE: I think what you're asking
2 essentially -- the version of what we produced, just
3 not filtered by disputes.

4 THE COURT: Yeah, but you have to tell me
5 what that looks like. I don't know the size of your
6 client's business, how often they produce anything.

7 MR. PETE: I believe that, in terms of New
8 York civil judgments on consumer records during the
9 Lexus period, we could potentially be looking at tens
10 of thousands, perhaps a hundred thousand. In terms of
11 the cost and time that it would take to get that, I
12 would say it's likely significant. I have not fully
13 discussed with them because that type of proposal or
14 word-around is not something that we discussed.

15 THE COURT: Well, do you have a sense of
16 what -- if plaintiff got what plaintiff seems to want,
17 we can produce it by?

18 MR. PETE: I don't want to speak for
19 plaintiff. As I understand what --

20 THE COURT: This is your end. They want a
21 lot so, at a minimum, you should know what it would
22 cost you to produce a lot, what they want, several
23 years --

24 MR. PETE: What they want is going back five
25 years.

1 THE COURT: Right.

2 MR. PETE: Which would be significant.

3 THE COURT: Look, you're trying to make your
4 proportionality defense. This is not proportionate to
5 the damages suffered here, in part because you have
6 thirteen people who disputed it and you're trying to
7 infer that oh, well, if only thirteen people disputed
8 it, that suggests that there's not a significant error
9 rate here. I have no idea if that inference is correct
10 or not but without knowing what it's going to cost your
11 client versus what the yield of helpful information is
12 going to be, it's hard to make an assessment. So how
13 much, how many hours, what does this look like, what
14 are the concerns? That's what the issue is.

15 MR. PETE: We're talking about what's being
16 requested, which was the full --

17 THE COURT: The sun, the moon, and the stars
18 is what they want.

19 MR. PETE: Yes. I think that there's a
20 conversation we haven't had, which is them requesting
21 the same data set, just not customers who disputed it.
22 I mean, that's not their request that we're here for.
23 We're here for a request for everything going back five
24 years.

25 THE COURT: Right.

1 MR. PETE: Which is significant man hours
2 involving multiple individuals, and likely a couple of
3 months' worth of work.

4 THE COURT: What's it going to cost, what's
5 the time period?

6 MR. PETE: So the two -- in terms of -- the
7 proposal that your Honor is suggesting I don't even
8 know if it's amenable to them as a compromise. It
9 hasn't been raised and we haven't had a chance to
10 discuss it because what your Honor is suggesting is
11 much narrower than what they're seeking. Your Honor is
12 suggesting that the period be limited to essentially
13 the Lexus period, as opposed to going back an
14 additional three and a half years.

15 THE COURT: Let's take it the other way.
16 I'm not suggesting, I'm trying to inquire as to the
17 parameters that are involved here in terms of time,
18 money, effort, distraction from your primary business,
19 your client's business goals, et cetera, all the things
20 that one should take into account in terms of a
21 proportionality analysis on the producer side, and the
22 need on the receiving party's end for how important the
23 information is. So if your client had to produce
24 everything the plaintiff is asking for, which is the
25 long period of time, not limited by vendor, if there

1 was anybody else from whom you were receiving judgment
2 information and pushing it out, not those who
3 challenged, et cetera, what is it going to cost your
4 client in terms of time, money, effort, whatever else
5 you think --

6 MR. PETE: Time, money, effort?

7 THE COURT: Whatever you think is relevant
8 here.

9 MR. PETE: With respect to going back to the
10 five years, I mean, I think we're likely talking about
11 a couple weeks' worth of work on the part of multiple
12 people because there are various departments that have
13 to be involved here. There's data storage, there's the
14 individual responsible for data collection, and then
15 the individuals responsible for then also compiling
16 that data into some type of format in which it can then
17 be produced to the plaintiff.

18 THE COURT: And you have any idea if it's in
19 a useful form right now.

20 MR. PETE: It's not in a useful form right
21 now. This would have to be created. Some useful form
22 would have to be constructed from records stored with
23 the client going back five years.

24 THE COURT: Do you have any information
25 about how it's stored? Is it stored in a spreadsheet,

1 is it stored only as a PDF or some other equivalent
2 image? What do they have?

3 MR. PETE: I believe they're stored at the -
4 - as I understand it, they are stored as various
5 individual image files, and going back beyond two
6 years, certain data is no longer maintained in the
7 image, it is maintained in kind of separate little
8 repositories based on the source it was received. So
9 basically, these records are not something that can
10 just be readily produced.

11 To circle back to -- the initial point was
12 that if we're talking about going back five years, in
13 our view, that type of undertaking is not necessary
14 because we submit that there's no reason -- they're not
15 going to be able to get a class for that period, which
16 is why we would intend to move to strike the class
17 definition of five years, which would moot this issue.
18 If your Honor were to grant that motion, this issue
19 would be moot.

20 THE COURT: It wouldn't be my motion. The
21 problem is, not having done it, despite our
22 conversation before, now I'm trying to anticipate
23 possible legal outcomes on the class/pleading/maybe
24 even summary judgment, without actually having even the
25 opportunity to see those motions, let alone know what

1 Judge Ross thinks about them.

2 MR. PETE: I'm not asking your Honor to rule
3 on these issues.

4 THE COURT: Yes, but you are asking me to
5 adapt the discovery schedule to -- or the scope of
6 discovery at this time anyway to the possible outcome
7 from one of those motions. Do you have any other
8 information about the effort that your client would
9 have to undertake in order to produce some version of
10 this data, whether it be time limited either by the one
11 year I think that you're including, or a three-year
12 period or a five-year period, the technical
13 limitations. I think you mentioned after two years,
14 then you'd have to do something different.

15 MR. PETE: I mean, I would think --

16 THE COURT: Any information?

17 MR. PETE: -- if we're narrowing the scope
18 of what they're looking for to say the Lexus period or
19 even two years, that's obviously going to be less of a
20 burden than the entire five years. In terms of the
21 specifics on the cost and time with those periods, that
22 information I don't have because that wasn't really
23 something that was proposed. I'm happy to get that
24 information but that type of limitation was not
25 proposed when we reached this impasse. Then it went

1 immediately to, let's go to the entire five years, and
2 that is a huge undertaking. Obviously, there's less of
3 an undertaking and it's less burdensome if we stick to
4 what's alleged in the complaint here, which is based
5 upon records obtained from Lexus/Nexus.

6 THE COURT: What about a different question,
7 which is, in your production with regard to dispute,
8 you provided six pieces of information, two of which
9 really relate to the dispute. So the four that would
10 cut across more than just the disputers would be a
11 consumer identifier, the court, the case number, and
12 the amount of the judgment versus the plaintiff's
13 suggestion is that she should have lots of information
14 and there's ten categories proposed, only one of which
15 is the dispute.

16 So do you have any idea of the way your
17 client keeps the information, if that's just one
18 record. Going back to Delarosa, it might be easier
19 just to do a data dump versus culling out certain
20 fields that plaintiff doesn't need or it might be
21 helpful as a backup but it's not immediately obvious
22 that it's necessary. Any idea how this information
23 is --

24 MR. PETE: Starting with the first one, I
25 believe, which are the judgment debtor's name, their

1 address, basically their contact information. That's
2 obviously information that CBC has, and our position is
3 that that's not necessary to be produced at all for two
4 reasons: One, it's generally accepted that pre-
5 certification, putative class members' contact
6 information is not discoverable unless there's some
7 bearing on the factual allegations. Here, none of the
8 prospective class are potentially fact witnesses.

9 Second, there are significant privacy
10 concerns CBC has for its consumers. What we produced
11 was data sufficient to allow counsel to retrieve the
12 records at the county clerk's office or what have you
13 and match them up with what we're reporting, namely the
14 index number, amount of the judgment. That's what
15 they're looking for. That is kind of the endeavor they
16 suggested at the initial conference that they're
17 undertaking. We provided information sufficient for
18 them to do that.

19 Names and addresses, to the extent that's
20 reflected in the public records that they're going to
21 pull, then they will have that information. I don't
22 know if any of these judgments have -- are for whatever
23 reason initialed or the names have been redacted or
24 sealed. I have no idea. They're going to be searching
25 public records based on the index number and the amount

1 of the judgment, which will enable them to locate the
2 actual judgment to the extent it can be located,
3 depending on the Court. So that extra information
4 they're seeking is going to be on the public record to
5 the extent it's public.

6 THE COURT: That doesn't answer my question,
7 which is, do you have any idea how your client's
8 records are kept such that it would affect the effort
9 to collect, produce, deliver to the plaintiffs in a
10 usable form these different categories of data?

11 MR. PETE: The case number was provided, the
12 amount -- so in terms of the categories of data that
13 were not provided, judgment debtor's address, judgment
14 debtor's name --

15 THE COURT: Status of the judgment.

16 MR. PETE: Status of the judgment due and
17 owing would really only be whatever was -- they don't
18 have the present status due and owing. They only have
19 whatever status was reported on a consumer report at
20 the time the inquiry was made. The status of the
21 judgment is the current status of the judgment we would
22 find in the public record.

23 THE COURT: I think that's what they're
24 saying.

25 MR. PETE: Yeah.

1 THE COURT: Number 8, page 2 of document 27
2 was, status of the judgment e.g. due and owing,
3 satisfied, et cetera, defendant reported to a third
4 party. So it was what was on the report when your
5 client pushed it out.

6 MR. PETE: That information can be culled
7 and obtained because it does exist within their data
8 centers as I understand it. Again, it is the man hour
9 and time of individuals for information that I'm not
10 sure there's any real purpose.

11 THE COURT: There's a huge purpose. If your
12 client -- they're claiming that your client knew that
13 Lexus/Nexus produced bad or unreliable information, and
14 part of that is because people either had their
15 judgments vacated, something -- I don't know, some
16 other state court proceeding happened so there was some
17 other kind of resolution, or they paid, right?

18 If you pushed out the information and it was
19 correct at the time you pushed it out, no harm, no
20 foul, nothing happened. Even if Lexus didn't update
21 it, they had whatever it was that was correct.
22 Obviously, the notion of updates suggests there was a
23 change. So if your client had the right information at
24 the moment it was pushed out, then how is that -- that
25 person is not a member of this class.

1 MR. PETE: Are we talking about just --
2 here, are we just referring to the status of the
3 judgment issue?

4 THE COURT: I'm not sure how far we can go
5 with this given that you're completely missing
6 information about what your client's effort would be to
7 produce information and how viable it is. Are you in
8 the position of -- what is it, Experian in this
9 Delarosa case. At the end of the day, you really want
10 to do a data dump. What do you care? You just hit a
11 button, it pushes it all out. Is that true for a one-
12 or two-year period but then after that, you have to re-
13 upload the information or recreate it? I don't know
14 how your client's records are. The problem is, I'm not
15 getting it from you that you know how your client's
16 records are.

17 MR. PETE: We're not in a position where
18 they can just do a simple data dump as Experian can.

19 THE COURT: All right. If I understand --
20 these are my concerns, plaintiff, with what you're
21 asking for. You want a long period of time. There's
22 not even a test run here as to what's a viable period,
23 partially because we don't have that information. It
24 doesn't seem like you had the conversation via
25 defendant's counsel with the client about what's

1 involved.

2 And you want more information. It's unclear
3 again how this -- two things, one on your side, whether
4 it's necessary, and on the other side, whether it's
5 practical for defendant to push it out. Then you are
6 saying you should be able to go back for a far time
7 period, the important difference being that that would
8 involve vendors other than Lexus/Nexus, which is what
9 your complaint is about. You try to say, there's a
10 general practice of not being careful about the source
11 of information for judgment-related -- updated judgment
12 information, but that's not what this plaintiff --
13 she's somebody who apparently, and this is what your
14 complaint talks about, had to deal with the Lexus/Nexus
15 problem, possible problem.

16 So on the plaintiff's side, why should you
17 be allowed to have a longer period of time given what
18 your complaint says about what they were on notice
19 about, where they picked up the allegedly problematic
20 information, which is from Lexus/Nexus, and your
21 putative class representative only had the Lexus/Nexus
22 problem. And we have no idea how hard this is going to
23 be, which is really not your burden but suggests that
24 there should be a much more detailed conversation
25 between counsel about what's practical, how much it's

1 going to cost, who should bear the costs, et cetera.

2 MR. SOUMALIS: Yes, your Honor. The short
3 answer to your Honor's question is, we seek to
4 represent the broadest New York class that we could
5 represent. However, if we were to get the data for
6 that one year, July, 2017 to August, 2018, from Lexus
7 only, which shows which civil judgments are reported by
8 this company as owing, we could simply compare that
9 data to data we've already acquired from the New York
10 Office of Administrative Courts for that one year and
11 get a very quick sense, is the error rate 1% or 30%?
12 Is the class in the thousands or the tens of thousands.
13 Is this an issue where we should come back so I can
14 give you a fuller explanation as to why I think a five-
15 year statute of limitations applies, like we pled, like
16 they have not moved on but other courts have found
17 applicable. But let's set that aside.

18 There are three objections, your Honor --

19 THE COURT: But are you -- okay, go ahead.

20 MR. SOUMALIS: In the document that they
21 filed, we filed jointly, docket 27 --

22 THE COURT: Right.

23 MR. SOUMALIS: -- are number one, privacy,
24 number two, the five-year statute of limitations,
25 number three, this idea that other vendors shouldn't be

1 included. Let's take the five-year statute of
2 limitations aside. That leaves us with a two-year
3 statute of limitations. No question that would apply.

4 Privacy is not at issue, your Honor. Every
5 single one of these people has a publicly filed
6 judgment against them available in New York with their
7 name, their address, and so forth. The reason why we
8 want that information is not to invade a privacy that
9 they already don't have. It's to simply be able to
10 compare that we're looking at the correct judgment.
11 The client i.d. that they're giving us or the customer
12 i.d., I can't be certain it's the same person. I want
13 to make sure that we have the correct data.

14 There's no privacy violation, your Honor.
15 On top of that, there's a protective order in this
16 case. On top of the protective order, they've
17 requested and we've agreed to and your Honor signed a
18 specific order that there's a permissible purpose to
19 turn this information over. So there's no privacy
20 issue, there's no five-year statute of limitations
21 issue.

22 And this idea of the vendors, your Honor,
23 I'll explain that as well because our claim is not that
24 Lexus/Nexus is the screw-up. There's no doubt that
25 they are because the three national bureaus that used

1 to buy data from them stopped using them because their
2 data was so bad. But the claim here under the FCRA is
3 that this company has the responsibility to assure
4 maximum possible accuracy regardless of who their
5 vendor is, where they get it.

6 THE COURT: Who else is the vendor? I don't
7 understand. Your complaint goes on and on and on about
8 all the problems with Lexus/Nexus.

9 MR. SOUMALIS: To be sure.

10 THE COURT: And your client seems to have a
11 Lexus/Nexus problem, so who else or what else are we
12 talking about?

13 MR. SOUMALIS: There might not be another
14 one. I don't have an answer to that question, your
15 Honor. I don't know why the cutoff is August, 2018.
16 As far as I know, they're still using them today.

17 THE COURT: What's the answer there?

18 MR. PETE: I believe I communicated to one
19 of counsel's colleagues that we were informed by the
20 client that they're not using Lexus as of that date.

21 THE COURT: As of August, 2018.

22 MR. PETE: Yes.

23 THE COURT: Okay. And you started using
24 them in 2017?

25 MR. PETE: Yes.

1 THE COURT: After the big three, as you all
2 like to call them?

3 MR. PETE: Yes.

4 MR. SOUMALIS: Let me just make a point,
5 your Honor, because it's important. I think what we
6 were informed is that they started using a different
7 Lexus product, not that they stopped using the company
8 altogether. But at any rate, I don't have discovery on
9 this.

10 THE COURT: Does that matter, what is the
11 product?

12 MR. SOUMALIS: It doesn't matter to me, your
13 Honor.

14 THE COURT: What it is?

15 MR. SOUMALIS: They said they have a new
16 filtering system that they claim was better. However,
17 I can't tell that because we don't have any discovery
18 on that, and certainly I can't test as to whether it's
19 any better because we don't have any data for either
20 before or after. But I think to cut to the chase, your
21 Honor, if we focus on that one year that they wish to
22 focus on and give us a full spreadsheet, not filtered
23 for disputes because disputes has nothing to do with
24 this, and it's not typical of Ms. Harvey since she
25 didn't dispute.

1 THE COURT: It's not that it has nothing to
2 do with it. That was the Delarosa issue, that that
3 filtering would help you get to a manageable forty-plus
4 and you could move on to your class certification.
5 It's not a substantive issue but it was a practical one
6 for helping you identify the alleged error here. But
7 anyway --

8 MR. SOUMALIS: So I think that would work
9 against Experian because they're a much bigger
10 business. It will not work against this defendant.
11 Your Honor, they're not making a serious
12 proportionality argument. The best that I've heard
13 today and at any point from this defendant is that it
14 will take a couple of weeks to give us a full
15 spreadsheet for the year. Give it to us. We already
16 have the data to compare it to and we'll be able to
17 come back here in a month and tell your Honor, this is
18 a significant problem, it's a tiny problem.

19 I don't know the answer to that and,
20 therefore, I can't make any reasonable judgment as to
21 proportionality and so forth without even basic data.
22 But I can assure you we have done over twenty of these
23 cases. There is a very good basis to argue that
24 there's a five-year statute of limitations, that the
25 vendor doesn't matter because at the end of the day,

1 it's this company that must assure that their records
2 are accurate and up to date, and I don't think they're
3 doing that, regardless of whether it's one software,
4 the other software, the updated Lexus software. I
5 don't think that matters but if we could focus on just
6 that one year and get the complete data for that one
7 year, I think we'll have the answer as to whether we're
8 looking at a significant problem with this defendant or
9 a minor one.

10 THE COURT: So in the other cases that
11 you're alluding to, were there more than one
12 representative plaintiff who could cover the period and
13 maybe the vendors and the type of information that was
14 of concern, or is it this?

15 MR. SOUMALIS: There was never more than one
16 -- I'm corrected. Some of the cases in Virginia had
17 multiple plaintiffs. Most did not, including the ones
18 in New York. The issue, your Honor, is a practical
19 one. Sometimes these defendants just give us
20 spreadsheets. They're data companies. They do a
21 search, they pump out a spreadsheet with all the
22 judgments that are unsatisfied.

23 Sometimes they want to give us the five-year
24 class because if they want to settle, they want the
25 entire problem to go away and to not be back here a

1 year from now, litigating the two- to five-year class
2 as opposed to the one- to two-year class. But the
3 problem in this case is, we have gotten nothing, just
4 these thirteen disputes. We don't even have the data
5 sufficient to compare to actual public records in New
6 York, and we just can't do our work that way, your
7 Honor.

8 THE COURT: Okay, so the information that
9 you're asking for at the top of page 2 of the letter at
10 27, is that the information that one would pull from a
11 Lexus/Nexus judgment search?

12 MR. SOUMALIS: Your Honor, all that
13 information is on the face of an Innovus report, a
14 CBCInnovis report. The information all comes from
15 Lexus/Nexus during that period of time, but it's
16 typically there on these reports regardless of the
17 time. All of the same data is also publicly available
18 in the New York Office of Administration and we could
19 just -- we already have a spreadsheet of it. It's just
20 comparing it. If our tech people could do it -- we're
21 a tiny firm -- I'm sure they could do it. They're a
22 data company.

23 MR. PETE: Your Honor, if I may, if it seems
24 we're now talking about just the one year as
25 potentially an initial compromise to move forward,

1 that's a conversation I'm happy to have with the client
2 to narrow this issue from where we came here today with
3 going back five years, to potentially coming to an
4 agreement to move forward with just a year. That's a
5 conversation I think I'm happy to have. I apologize if
6 perhaps we did not have the most robust meet and confer
7 as we should have, but that seems to be -- as counsel
8 suggested. He suggested it as a potential initial
9 work-around and I'm happy to have that discussion with
10 my client to narrow the scope of this to the
11 allegations in the complaint.

12 THE COURT: I'm not leaving this open here.
13 These are the issues that were identified in the June
14 10th order, which says, "counsel should be prepared to
15 discuss the issues raised in the joint status letter"
16 -- that's the one we've been talking about --
17 "including the appropriate statute of limitations,
18 putative classes, the proportionality and feasibility
19 of the discovery sought by plaintiffs, and whether
20 defendants intend to move pursuant to FRCP 12(c)."

21 In order to move this forward, and this is
22 without making a decision as to whether additional
23 discovery would be allowed, although I do think there
24 are concerns about what this plaintiff putative class
25 representative could represent and whether additional

1 discovery related to her would be appropriate, because
2 defendant's counsel is representing that the
3 Lexus/Nexus information was used between July, 2017 and
4 August, 2018.

5 What I don't want to hear down the line is
6 that you're giving me some information that is
7 finessing some distinction between different
8 Lexus/Nexus products, where the second product is not
9 one that either completely has avoided the problem that
10 allegedly exists with the outdated judgment
11 information. But taking your representation that this
12 Lexus/Nexus problem which has been identified in the
13 complaint, the defendant's should produce the
14 information from July, 2017 to August, 2018 about the
15 New York civil judgment information that you produced
16 to your client's clients.

17 Whatever the available information is, but
18 I'm going to take what plaintiff's counsel said, which
19 is that your reports include items 1 through -- they
20 said 1 through 10. Is the dispute information in it or
21 is it 1 through 9? 10 seems like an in-house piece of
22 information.

23 MR. SOUMALIS: Yes, that's correct.

24 MR. PETE: (Ui) -- your Honor.

25 MR. SOUMALIS: I didn't mean to talk over

1 you. Dispute would be in-house.

2 MR. PETE: We agree with that, your Honor.

3 THE COURT: So 1 through 9. If 10 is there,
4 then include that information. You should produce it
5 in a usable form. That's going to require some
6 conversation. I don't know if we're talking about an
7 Excel spreadsheet, some other database that you all use
8 for these kinds of cases, some program that you can
9 share. I don't know how this information looks. I
10 don't want you to spend time going through some
11 production that then plaintiffs will find completely
12 useless or have to spend a fortune to put it into some
13 usable form, so you should talk about the technical
14 production with each other before you actually make the
15 production.

16 Just for the record, I'll say that there was
17 an under-persuasive argument provided by defendant as
18 to any proportionality burden. It may be in data sets
19 going further back, you start to have additional
20 technical problems with the production, I don't know.
21 You're going to have to talk to your client and if this
22 issue is revisited, then you should come prepared with
23 that information if I have to be part of that
24 discussion.

25 What's the time line for this? You have to

1 talk to your client, compare notes with your tech
2 people to make sure what you're getting is going to be
3 in a usable form, and make the production.

4 MR. PETE: I would propose if I could speak
5 to my client and then relay a proposal to plaintiff's
6 counsel. And if it's unacceptable to plaintiff's
7 counsel, we can have that discussion. I think we can,
8 between the two of us, work out a time and manner for
9 the production ordered by your Honor.

10 MR. SOUMALIS: That seems reasonable.

11 THE COURT: By the end of the month, I'd
12 like a letter with an update as to what your schedule
13 is going to be. Then what I'd like is your proposal at
14 the end of when the production is made and whatever
15 window you need to do your research comparison,
16 whatever it is you're going to do, a date by which we
17 can then come back and revisit or at least me get an
18 update from you all as to where you are, how things are
19 looking. Obviously, we'll see what's going on if you
20 do engage in motion practice, and then figure out what
21 else to do with discovery.

22 In these cases, you get these data sets. Is
23 there some discovery about best practices, lack of best
24 practices? Is there a 30(b)(6) deposition? Let me put
25 an asterisk next to that. According to a very talented

1 intern, these cases settle, so that's where I'm going
2 with this.

3 MR. PETE: Perhaps they could mediate it.

4 THE COURT: We can send you to a mediator if
5 you'd like. We have the Court's ADR program. But in
6 general, if the discovery is going to proceed here,
7 what else would you need beyond your possible ask in
8 the future for additional data?

9 MR. SOUMALIS: So the attempt to settle,
10 your Honor, once we get a scope of whether we're
11 looking at a big group, a small group, the type of
12 problem. Certainly we will need some depositions after
13 the data comes in. I can't tell for sure if it would
14 be a 30(b)(6) or a combination of 30(b)(6) and
15 30(b)(1). But typically, what I've seen in these cases
16 is, the data comes in some type of an electronic usable
17 format.

18 Typically, there's a 30(b)(1) deposition to
19 make sure that the person who prepared that spreadsheet
20 or was responsible for it did the adequate search,
21 didn't leave out any relevant fields, et cetera.
22 That's an important component. A 30(b)(6) is usually
23 one or two witnesses related to the procedures, what
24 they know about data gathering, delivery, updating,
25 various courts, et cetera. Then these cases also tend

1 to revolve around, your Honor, whether a wilful
2 violation is possible because that's typically what
3 gets cases certified. Therefore, there's some
4 discovery, usually depositions, on the extent of
5 knowledge of a potential problem Lexus or disputes or
6 government complaints, et cetera.

7 So if I had to summarize, that's what I see
8 beyond this production of information about possible
9 class members. To be frank, your Honor, what drives it
10 is what the numbers look like. If we find out that
11 there are only thirteen people who really have this
12 problem, then all of this is not going to take place.
13 If there's 130,000 people, I might have a more
14 comprehensive list when we come back to your Honor
15 about what else remains.

16 THE COURT: Okay. How big a company is CBC?

17 MR. PETE: In terms of?

18 THE COURT: I don't know, revenue,
19 employees.

20 MR. PETE: I will say that I think --

21 THE COURT: It's the other side of the
22 equation on a settlement.

23 MR. PETE: It's a decent-sized company, I'll
24 put it that way.

25 THE COURT: Okay.

1 MR. PETE: It's not as big as your
2 Experians, Trans Unions, but it's by no means a mom-
3 and-pop operation.

4 THE COURT: Okay.

5 MR. PETE: I would say it's a medium-sized
6 company.

7 THE COURT: Okay. If you want the details,
8 you can order the transcript, but I think you know
9 where we are. By the end of the month, what I want is
10 your proposed schedule for the discovery that's been
11 ordered, a window in which the plaintiff would review
12 the data that is produced and be able to make an
13 evaluation, and a date by which you'll give me an
14 update on where that leaves you in terms of what other
15 discovery would be needed and whether the dispute as to
16 the other years remains alive or not. I think we
17 should have an outside date. I don't know. What does
18 it take for production in these other cases?

19 MR. SOUMALIS: I'm assuming they would be
20 able to give us an Excel spreadsheet similar to the one
21 they gave us but with more data. We'll probably need
22 thirty days to be able to compare that spreadsheet to
23 the data we have. So I don't know, I guess it depends
24 on the first step. If they need thirty or sixty days,
25 then that gets us into the fall. If they need longer

1 than that, maybe we should talk about it.

2 MR. PETE: CBC hasn't really been involved
3 in any of these types of cases so they don't really
4 have -- I don't have a kind of prior case experience to
5 work off of in terms of, this is how long. This is a
6 little bit new for them, which is why I want to chat
7 with them so I can make an adequate representation to
8 counsel in terms of how long this would take.

9 THE COURT: Okay. I would say by the end of
10 October, you should give me a status letter. If you're
11 in a position to give me one sooner than that, then you
12 should do that. Are there other issues to discuss?

13 MR. SOUMALIS: Not from the plaintiff, your
14 Honor, thank you.

15 MR. PETE: No, your Honor.

16 THE COURT: Thank you.

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18 I certify that the foregoing is a correct
19 transcript from the electronic sound recording of the
20 proceedings in the above-entitled matter.
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25 ELIZABETH BARRON

July 11, 2019